



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

☞ Appendix A ... segment I

LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2011 LRB-0691 (For: Rep. Mursau)

has been transferred to the drafting file for

2013 LRB-0082 (For: Rep. Mursau)



RESEARCH APPENDIX - PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 09/14/2012 (Per: MGG)

☞ The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2011 DRAFTING REQUEST

Bill

Received: **12/13/2010**

Received By: **rkite**

Wanted: **As time permits**

Companion to LRB:

For: **Jeffrey Mursau (608) 266-3780**

By/Representing: **Andy Potts**

May Contact:

Drafter: **mglass**

Subject: **Nat. Res. - miscellaneous**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Mursau@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Off-highway motorcycle registration and regulation

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 01/11/2011			_____			S&L
/P1	mglass 09/16/2011	kfollett 10/13/2011	jfrantze 10/13/2011	_____	mbarman 10/13/2011		

FE Sent For:

<END>

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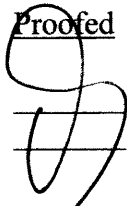
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FE Sent For:

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also to ATV trails -
also motorcycle

Wisconsin Statute Chapter 23.XX

Off Highway Motorcycles

1. Definitions:

- An Off Highway Motorcycle is a two wheeled vehicle that is straddled by the rider and is equipped with handlebars.
- Can include both street legal dual-sport on and off highway motorcycles and non-street legal off-highway motorcycles.
- Motorcycle must have a functioning USFS approved spark arrester.
- Motorcycle must be equipped with foot rests for operator. If a passenger is carried footrests for the passenger must also be provided.
- Off highway motorcycle trail means:
 - a) OHM trail means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by OHM vehicle operators by the governmental agency having jurisdiction.

2. Registration

- OHM registration program is to be administrated by the Department of Natural Resources.
- All new OHM (including competition OHM) require state registration either with the Department of Natural Resources or the DOT.
- All street legal OHM require DOT registration
- All street legal OHM used on public trails also require Department of Natural Resources registration.
- Any non-street legal OHM if used on public trails requires an annual registration sticker.
- Any OHM may be registered for public trail use.
- The fee for the issuance or renewal of a registration certificate for public use will be determined by the Department of Natural Resources and comparable to that of an ATV registration fee.
- Effective periods for public use of registered OHM's will be for 2 years.
- For the issuance of original or duplicate registration and for the transfer or renewal of registration documentation they shall be administered by the Department of Natural Resources.
- Registration will be available for OHMs manufactured before the implementation of this regulation; older vehicles might not have a title or registration documentation held by the current owner. Older vehicles must meet or be modified to meet current sound regulations.

3. Rules of operation

- No person may operate an OHM;
 - a) In any careless way so as to endanger the person or property of another.
 - b) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for OHM use.

- c) To drive or pursue any animal except as a part of normal farming operations involving the driving of livestock.
- d) When on a trail within 150 feet of a dwelling at a speed of exceeding 10 miles per hour.
- e) In a manner which violates rules promulgated by the Department of Natural Resources
- f) No person under 18 may operate or be a passenger on an OHM without wearing protective headgear approved by the Department of Natural Resources and with the chin strap properly fastened.
- g) A person may operate an OHM on the roadway portion of any highway only in the following situations;
 - 1) To cross a roadway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practicable if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the OHM vehicle prior to the crossing and yields the right-of-way to other vehicles, pedestrians, and electric personal assistive mobility devices using the roadway.
 - 2) With due regard to safety and in compliance with the rules promulgated by the Department of Natural Resources and approved by the department of transportation.
- Intoxicated Operation of an OHM
 - a) No person may operate an OHM while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation on an OHM
 - b) The Department of Natural Resources shall promulgate rules for a public education program to inform OHM operators of the prohibitions and penalties in the intoxicated operation of an OHM law.

4. *Age Restrictions and Safety Certification Programs*

- There is no OHM safety certification program at this time.
- The Department of Natural Resources shall supervise the establishment of a program of instruction on OHM vehicle laws, including the intoxicated operation if it's an OHM vehicle law, regulation, safety and/or related subjects.
- The Department of Natural Resources will evaluate the curriculum of non-government safety courses to determine if the course satisfies their requirement for safety training.

5. *Public Education Program*

- The department shall promulgate rules to provide for a public education to:
 - a) Inform OHM vehicle operators of the prohibitions and penalties including the intoxicated operation of an OHM vehicle.
 - b) Provide for signs briefly explaining the intoxicated operation of an OHM vehicle.
- a. The department shall develop and issue an educational pamphlet on the intoxicated operation of an OHM vehicle.

6. *Safety program*

- The department Of Natural Resources shall establish a program to award grants to organizations that meet the eligibility requirements under paragraph B.
- An organization receiving a grant under this subsection shall use the grant monies to promote and provide support to the program established under subsection 5 by conducting activities that include all of the following:
 - a) Collecting data on the recreational operation of OHM vehicles off the highways
 - b) Providing assistance to the Department in location, recruiting, training instructors for the program established under subsection 5.
 - c) Attempting to increase participation by current and future OHM vehicle operators and owners in the program established under subsection 5.
 - d) Assisting the Department of Natural Resources and the Department of Tourism in creating an outreach program to inform local communities of appropriate OHM vehicle use in their communities and of the economic benefits that may be gained from promoting tourism to attract OHM vehicle operators.
 - e) Attempting to improve and maintain its relationship with the Department of Natural Resources, the department of Tourism, OHM vehicle dealers, OHM vehicle manufactures, ATV clubs, snowmobile clubs, OHV clubs, and OHV alliances.
 - f) Recruiting, assisting in the training of, and providing support to a core of volunteers that will assist in providing instruction on the safe and responsible operation of OHM vehicles that is given in the field to OHM vehicle operations.
 - g) Publishing a manual in cooperation of the department that shall be used to train volunteers in monitoring the recreational operation of OHM vehicles for safety issues and other issues that relate to responsible operation on OHM vehicles.
- To be eligible for a grant under this subsection, an organization shall meet all of the follow requirements:
 - a) The organization is a non stock corporation organized in this state.
 - b) The organization promotes the operation of OHM vehicles in a manner that is safe and responsible and that does not harm the environment.
 - c) The organization promotes the operation of OHM vehicles in a manner does not conflict with the laws, rules, and departmental polices that relate to the operation of OHM vehicles.
 - d) The interest of the organization is limited to the recreational operation of OHM vehicles on allowed vehicle trails and routes and other areas for off-road riding and recreation.
 - e) The organization has a board of directors that has a majority of members who are representatives of OHM vehicle clubs.
 - f) The organization provides support to OHM vehicle clubs.
- The department shall pay the grants from the appropriate fund.

7. *Land Owner Incentive Program*

- The department shall establish a program to make incentive payments to private landowners who permit public OHM vehicle corridors on their lands and who apply for the payments.

- An application is not considered completed until the forester or another employee of each county in which the public OHM vehicle corridor is located, measures the length of the corridor in that county for the purpose of calculating the payment.
- Incentive payments under the program shall be calculated by the department.
- If the total amount of the incentive payments made in a given fiscal year would exceed the amount available for the payments, the department shall establish a system to pro rate the payments.

8. *Equipment Requirements*

- **Headlamp and tail lamp; When operated during hours of darkness all OHM's must display a lighted headlamp and tail lamp**
 - a. The headlamp on a OHM vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance at least 200 feet ahead of the OHM vehicle
 - b. The tail amp on an OHM vehicle is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.
- Every OHM vehicle is required to be equipped with at least one brake operated either by hand or by foot.
- Every OHM vehicle is require to be equipped with a functioning muffler to prevent excessive or unusual noise and with a functioning spark arrestor of a type approved by the US forest service.
- Noise limits
- No person may manufacture, sell, rent or operate an OHM vehicle that is constructed in such a manner that noise emitted from the OHM vehicle exceeds 96 decibels on the A scale as measured in the manner prescribed under rules promulgated by the department.

9. *Operator Equipment Requirements*

- All operators and passengers under 18 on OHM on public trails must wear a safety helmet approved by the Department Of Natural Resources.
- All operators and passengers must wear eye protection.

10. *Accident Reporting*

- The operator of an OHM involved in an accident resulting in death or injury requiring treatment shall give notice to conservation warden or local law enforcement officer as soon as possible and shall file a written report with the Department of Natural Resources on a DNR form within 10 days. If the operator of an OHM vehicle is physically incapable of marking the report required by this subsection and there was another witness to the accident capable of making the report, the witness may make the report.

11. *Routes and Trails*

- **Department Authority.** The department shall encourage and supervise a system of OHM vehicle routes and trails. The department may establish standards and procedures for certifying the designation of OHM vehicle routes and trails.
- **Routes.** A town village city or county may designate highways as OHM vehicle routes. No state trunk highway or connecting highway may be designated as an OHM vehicle route unless the department of transportation approves the designation.
- **Trails.** A town village city county or the department may designate corridors thru land which it owns or controls, or for which it obtains leases, easements or permission, for use as OHM vehicle trails.
- **Restrictions.** The designating authority may specify effective periods for the use of OHM vehicle routes and trails and may restrict or prohibit the operation of an OHM vehicle during certain periods of the year.
- **Signs.** The department, in cooperation with the department of transportation, shall establish uniform OHM vehicle route and trail sign standards.
- **Interference of signs and standards prohibited.**
 - a) No person may intentionally remove, damage, deface, move or obstruct any uniform OHM vehicle route or trail sign or standard or intentionally interfere with the effective operation of any uniform OHM vehicle route or trail sign or standard if the sign or standard is legally placed by the state, any municipality, or any authorized individual
 - b) No person may possess any uniform OHM vehicle route or trail sign or standard of the type established by the department for the warning instruction or information of the public, unless he or she obtained the uniform OHM vehicle route or trail sign or standard. Possession of a uniform OHM vehicle route or trail sign or standard creates a rebuttable presumption of illegal possession.

12. *Administration; Enforcements; Aids*

- **Enforcement.** The department may utilize monies received under the OHM vehicle registration program for the purposes including costs associated with enforcement, safety education, accident reports and analyses, law enforcement aid to county, and other similar costs in administering and enforcing this section.
- **OHM vehicle projects.** Any of the following OHM vehicle projects are eligible for funding as a state OHM vehicle project from the appropriate account or for aid as a non-state OHM vehicle project from the appropriate accounts:
 - (1) Acquisition of an easement or land in fee simple.
 - (2) An OHM vehicle facility such as a parking area, riding area, shelter, toilets or other improvements
 - (3) Development of OHM vehicle trails
 - (4) Development or maintenance of a snowmobile route or trail or an ATV trail or facility if the route, trail or facility is open for use by OHM vehicles.
 - (5) Maintenance of OHM vehicle trails
 - (6) Purchase of OHM liability insurance.
- **Signs.** In addition to paragraph B, the department may provide aid under this subsection to a town, village, city or county or up to 100% of the cost of placing signs developed for OHM safety programs.

13. *Liability of Land Owners. Section 895.52 applies to this section*

14. *Local Ordinances*

- a. Counties, towns, cities and villages may enact ordinances regulating OHM vehicles on OHM vehicle trails maintained by or on OHM vehicle routes designated by the county city, town or village.
- b. Any county, town, city or village which is in strict conformity with this section and rules promulgated by the department under this section, if the ordinance encompasses all aspects encompassed by this section.
- c. If a count, town, city or village adopts an ordinance regulating OHM vehicle, its clerk shall immediately send a copy of the ordinance to the department and to the office of any law enforcement agency of the municipality or county having jurisdiction over any highway designated as an OHM vehicle route.

15. *Enforcements*

- a. An officer of the state traffic patrol under s.110.07(1), inspector under S.110.07(3), conservation warden appointed by the department under S.23.10, county sheriff or municipal peace officer has authority and jurisdiction to enforce this section and ordinances enacted in conformity with this section.
- b. No operator of an OHM vehicle may refuse to stop after being requested or signaled to do so by a law enforcement officer or a commission warden, as defined in S.939.22(5).

16. *Penalties*

- a. (Refer to ATV regulations)

23.33 All-terrain vehicles.

23.33(1)

(1) (intro.) **Definitions.** As used in this section:

23.33(1)(a)

(a) "Accompanied" means being subject to continuous verbal direction or control.

23.33(1)(ag)

(ag) "Agricultural purpose" means a purpose related to beekeeping, operating commercial feedlots, dairying, egg production, floriculture, fish or fur farming, forest and game management, grazing, livestock raising, operating orchards, plant greenhouses or nurseries, poultry raising, raising grain, grass, mint or seed crops, sod farming or raising fruits, nuts, berries or vegetables.

23.33(1)(am)

(am) "Alcohol beverages" has the meaning specified under s. 125.02 (1).

23.33(1)(ar)

(ar) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

23.33(1)(b)

(b) "All-terrain vehicle" has the meaning specified under s. 340.01 (2g).

23.33(1)(bc)

(bc) "All-terrain vehicle club" means a club consisting of individuals that promotes the recreational use of all-terrain vehicles.

23.33(1)(bd)

(bd) "All-terrain vehicle dealer" means a person engaged in the sale of all-terrain vehicles for a profit at wholesale or retail.

23.33(1)(bh)

(bh) "All-terrain vehicle distributor" means a person who sells or distributes all-terrain vehicles to all-terrain vehicle dealers or who maintains distributor representatives.

23.33(1)(bp)

(bp) "All-terrain vehicle manufacturer" means a person engaged in the manufacture of all-terrain vehicles for sale to the public.

23.33(1)(bt)

(bt) "All-terrain vehicle renter" means a person engaged in the rental or leasing of all-terrain vehicles to the public.

23.33(1)(c)

(c) "All-terrain vehicle route" means a highway or sidewalk designated for use by all-terrain

vehicle operators by the governmental agency having jurisdiction as authorized under this section.

23.33(1)(d)

(d) "All-terrain vehicle trail" means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by all-terrain vehicle operators by the governmental agency having jurisdiction, but excluding roadways of highways except those roadways that are seasonally not maintained for motor vehicle traffic.

23.33(1)(dm)

(dm) "Approved public treatment facility" has the meaning specified under s. 51.45 (2) (c).

23.33(1)(e)

(e) "Controlled substance" has the meaning specified under s. 961.01 (4).

23.33(1)(f)

(f) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

23.33(1)(h)

(h) "Immediate family" means persons who are related as spouses, as siblings or as parent and child.

23.33(1)(i)

(i) "Intoxicant" means any alcohol beverage, controlled substance, controlled substance analog or other drug or any combination thereof.

23.33(1)(ic)

O H M

(ic) "Intoxicated operation of an ~~all-terrain~~ vehicle law" means sub. (4c) or a local ordinance in conformity therewith or, if the operation of an all-terrain vehicle is involved, s. 940.09 or 940.25.

23.33(1)(id)

(id) "Lac du Flambeau band" means the Lac du Flambeau band of Lake Superior Chippewa.

23.33(1)(ie)

(ie) "Lac du Flambeau reservation" means the territory within the boundaries of the Lac du Flambeau reservation that were in existence on April 10, 1996.

23.33(1)(if)

(if) "Land under the management and control of the person's immediate family" means land owned or leased by the person or a member of the person's immediate family over which the owner or lessee has management and control. This term excludes land owned or leased by an organization of which the person or a member of the person's immediate family is a member.

23.33(1)(ig)

(ig) "Law enforcement officer" has the meaning specified under s. 165.85 (2) (c) and includes a person appointed as a conservation warden by the department under s. 23.10 (1).

23.33(1)(ir) ^{O H M route} ^{O H M trail} ^{and which has not been registered for use on highways}

(ir) "Operate" means to exercise physical control over the speed or direction of an all-terrain vehicle or to physically manipulate or activate any of the controls of an all-terrain vehicle necessary to put it in motion.

23.33(1)(it)

(it) "Operation" means the exercise of physical control over the speed or direction of an all-terrain vehicle or the physical manipulation or activation of any of the controls of an all-terrain vehicle necessary to put it in motion.

23.33(1)(iw)

(iw) "Operator" means a person who operates an all-terrain vehicle, who is responsible for the operation of an all-terrain vehicle or who is supervising the operation of an all-terrain vehicle.

23.33(1)(j)

(j) "Owner" means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

23.33(1)(je)

(je) "Purpose of authorized analysis" means for the purpose of determining or obtaining evidence of the presence, quantity or concentration of any intoxicant in a person's blood, breath or urine.

23.33(1)(jm)

(jm) "Refusal law" means sub. (4p) (e) or a local ordinance in conformity therewith.

23.33(1)(jn)

(jn) "Registration documentation" means an all-terrain vehicle registration certificate, a validated registration receipt, or a registration decal.

23.33(1)(jo)

(jo) (intro.) "Restricted controlled substance" means any of the following:

23.33(1)(jo)1.

1. A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

23.33(1)(jo)2.

2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in subd. 1.

23.33(1)(jo)3.

3. Cocaine or any of its metabolites.

23.33(1)(jo)4.

4. Methamphetamine.

23.33(1)(jo)5.

5. Delta-9-tetrahydrocannabinol.

23.33(1)(jp)

(jp) "Small all-terrain vehicle" means an all-terrain vehicle that has 4 wheels and that has either an engine certified by the manufacturer at not more than 90 cubic centimeters or an equivalent power unit.

23.33(1)(jq)

(jq) "Snow removal device" means an attachment designed and installed for the purpose of removing snow. An attachment under this paragraph may be a plow blade, blower, bucket, or brush.

23.33(1)(js)

(js) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (2).

23.33(1)(n)

(n) "Used exclusively on private property" means use of an all-terrain vehicle by the owner of the all-terrain vehicle or a member of his or her immediate family only on land owned or leased by the all-terrain vehicle owner or a member of his or her immediate family.

23.33(1)(o)

(o) "Validated registration receipt" means a receipt issued by the department or an agent under sub. (2) (ig) 1. a. that shows that an application and the required fees for a registration certificate has been submitted to the department.

23.33 - ANNOT.

Cross-reference: See also definitions in s. 340.01.

23.33(2)

(2) Registration.

23.33(2)(a)

(a) *Requirement.* No person may operate and no owner may give permission for the operation of an all-terrain vehicle within this state unless the all-terrain vehicle is registered for public use or for private use under this subsection or sub. (2g), is exempt from registration, or is operated with a reflectorized plate attached in the manner specified under par. (dm) 3. No person may operate

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and no owner may give permission for the operation of an all-terrain vehicle on an all-terrain vehicle route or an all-terrain vehicle trail unless the all-terrain vehicle is registered for public use under this subsection or sub. (2g).

23.33(2)(b)

(b) (intro.) *Exemptions.* An all-terrain vehicle is exempt from registration if it is:

23.33(2)(b)1.

1. Owned by the United States, another state or a political subdivision thereof, but the exterior of the all-terrain vehicle shall display in a visible manner the name of the owner.

23.33(2)(b)2.

2. Covered by a valid registration in another state, province or country if there is some identification of registration displayed on the all-terrain vehicle and it has not been in this state for more than 15 consecutive days.

23.33(2)(b)2m.

2m. (intro.) Covered by a valid registration of a federally recognized American Indian tribe or band, if all of the following apply:

23.33(2)(b)2m.a.

a. The registration program of the tribe or band is covered by an agreement under s. 23.35.

23.33(2)(b)2m.b.

b. The all-terrain vehicle displays the registration decal required by the tribe or band.

23.33(2)(b)2m.c.

c. The all-terrain vehicle has not been, for more than 15 consecutive days, in that portion of this state that is outside the boundaries of the reservation where it is registered.

23.33(2)(b)3.

3. Used exclusively for racing on a raceway facility.

23.33(2)(b)3m.

3m. Present in this state, for a period not to exceed 15 days, and if it is used exclusively as part of an advertisement being made for the manufacturer of the all-terrain vehicle.

23.33(2)(b)4.

4. Owned by a political subdivision of the state and used for enforcement or emergency purposes.

23.33(2)(b)5.

5. Specified as exempt from registration by department rule.

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23.33(2)(c)

(c) *Registration; public use; fee.* Any all-terrain vehicle may be registered for public use. The fee for the issuance or renewal of a registration certificate for public use is \$30.

23.33(2)(d)

(d) *Registration; private use; fee.* An all-terrain vehicle used exclusively for agricultural purposes or used exclusively on private property may be registered for private use. The fee for the issuance of a registration certificate for private use is \$15.

23.33(2)(dm)

(dm) *Registration; commercial owner; fee.*

23.33(2)(dm)1.

1. Every person who is an all-terrain vehicle manufacturer, all-terrain vehicle dealer, all-terrain vehicle distributor or all-terrain vehicle renter or any combination thereof engaged in business in this state shall register with the department and obtain from the department a commercial all-terrain vehicle certificate.

23.33(2)(dm)2.

2. The fee for the issuance or renewal of a commercial all-terrain vehicle certificate is \$90. Upon receipt of the application form required by the department and the fee required under this subdivision, the department shall issue to the applicant a commercial all-terrain vehicle certificate and 3 reflectorized plates. The fee for additional reflectorized plates is \$30 per plate.

23.33(2)(dm)3.

3. A person who is required to obtain a commercial all-terrain vehicle certificate under subd. 1. shall attach in a clearly visible place a reflectorized plate to any all-terrain vehicle that the person leases, rents, offers for sale or otherwise allows to be used whenever the all-terrain vehicle is being operated.

23.33(2)(dm)4.

4. Paragraphs (i), (ig), and (ir) do not apply to commercial all-terrain vehicle certificates or reflectorized plates.

23.33(2)(e)

(e) *Other fees.* The fee for the transfer of an all-terrain vehicle registration certificate is \$5. The fee for the issuance of a duplicate all-terrain vehicle registration certificate, duplicate commercial all-terrain vehicle certificate or duplicate registration decals is \$5. The fee for the issuance of registration decals to a county or municipality is \$5. There is no fee for the issuance of registration decals to the state.

23.33(2)(f)

(f) *Effective periods; public use.*

23.33(2)(f)1.

1. Except as provided under subd. 2., an all-terrain vehicle public-use registration certificate is

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two
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valid for a 2-year period.

23.33(2)(f)2.

2. The department may specify by rule an annual expiration date for all-terrain vehicle registrations and may reduce the effective period of a registration so it expires on that date.

23.33(2)(g)

(g) *Effective period; private use.* An all-terrain vehicle private-use registration certificate is valid from the date of issuance until ownership of the all-terrain vehicle is transferred.

23.33(2)(gm)

(gm) *Effective period; commercial owners.*

23.33(2)(gm)1.

1. Except as provided under subd. 2., a commercial all-terrain vehicle certificate is valid for a 2-year period.

23.33(2)(gm)2.

2. The department may specify by rule an annual expiration date for commercial all-terrain vehicle certificates and may reduce the effective period of a commercial all-terrain vehicle certificate so it expires on that date.

23.33(2)(i)

(i) (intro.) *Registration; issuers.* For the issuance of original or duplicate registration documentation and for the transfer or renewal of registration documentation, the department may do any of the following:

23.33(2)(i)1.

1. Directly issue, transfer, or renew the registration documentation with or without using the service specified in par. (ig) 1.

23.33(2)(i)3.

3. Appoint persons who are not employees of the department as agents of the department to issue, transfer, or renew the registration documentation using either or both of the services specified in par. (ig) 1.

23.33(2)(ig)

(ig) *Registration; methods of issuance.*

23.33(2)(ig)1.

1. (intro.) For the issuance of original or duplicate registration documentation and for the transfer or renewal of registration documentation, the department may implement either or both of the following procedures to be provided by the department and any agents appointed under par. (i) 3.:

23.33(2)(ig)1.a.

a. A procedure under which the department or an agent appointed under par. (i) 3. accepts applications for registration documentation and issue a validated registration receipt at the time the applicant submits the application accompanied by the required fees.

23.33(2)(ig)1.b.

b. A procedure under which the department or agent may accept applications for registration documentation and issue to each applicant all or some of the items of the registration documentation at the time the applicant submits the application accompanied by the required fees.

23.33(2)(ig)2.

2. Under either procedure under subd. 1., the applicant shall receive any remaining items of registration documentation directly from the department at a later date. The items of registration documentation issued at the time of the submittal of the application under either procedure shall be sufficient to allow the all-terrain vehicle for which the application is submitted to be operated in compliance with the registration requirements under this subsection. The items of registration documentation issued under subd. 1. b. shall include at least one registration decal.

23.33(2)(ir)

(ir) *Registration; supplemental fees.*

23.33(2)(ir)1.

1. In addition to the applicable fee under par. (c), (d), or (e), each agent appointed under par. (i) 3. shall collect a service fee of \$3 each time the agent issues a validated registration receipt under par. (ig) 1. a. The agent shall retain the entire amount of each service fee the agent collects.

23.33(2)(ir)2.

2. In addition to the applicable fee under par. (c), (d), or (e), the department or the agent appointed under par. (i) 3. shall collect a service fee of \$5 each time the service under par. (ig) 1. b. is provided. The agent shall remit to the department \$1 of each service fee the agent collects.

23.33(2)(o)

(o) *Receipt of fees.* All fees remitted to or collected by the department under par. (ir) shall be credited to the appropriation account under s. 20.370 (9) (hu).

23.33(2)(p)

(p) *Rules.*

23.33(2)(p)1.

1. The department may promulgate rules to establish eligibility and other criteria for the appointment of agents under par. (i) 3. and to regulate the activities of these agents.

23.33(2)(p)2.

2. The department may establish by rule additional procedures and requirements for all-terrain vehicle registration.

23.33(2g)

(2g) Lac du Flambeau band registration program.

23.33(2g)(a)

(a) *Authorization for issuance.* The Lac du Flambeau band may issue registration certificates for public use or private use for all-terrain vehicles that are equivalent to the registration certificates for public use or private use that are issued by the department. The Lac du Flambeau band may renew and transfer a registration certificate that it or the department has issued. The Lac du Flambeau band may issue duplicates of only those registration certificates that it issues under this subsection.

23.33(2g)(b)

(b) *Requirements for issuance; fees; effective periods.*

23.33(2g)(b)1.

1. For issuing or renewing a registration certificate under this subsection, the Lac du Flambeau band shall collect the same fee that would be collected for the equivalent registration certificate under sub. (2) (c) and (d). For transferring a registration certificate or issuing a duplicate registration certificate under this subsection, the Lac du Flambeau band shall collect the same fee that would be collected for the equivalent service under sub. (2) (e).

23.33(2g)(b)2.

2. The Lac du Flambeau band may not issue, renew or otherwise process registration certificates under this subsection in conjunction with discount coupons or as part of a promotion or other merchandising offer.

23.33(2g)(b)3.

3. For a registration certificate issued, transferred or renewed under this subsection, the effective period shall be the same as it would be for the equivalent registration certificate under sub. (2) (f) 1. or (g) or under a rule promulgated under sub. (2) (f) 2.

23.33(2g)(b)4.

4. The Lac du Flambeau band may issue, renew or otherwise process registration certificates under this subsection only to applicants who appear in person on the Lac du Flambeau reservation.

23.33(2g)(c)

(c) *Requirements for registration applications and decals.*

23.33(2g)(c)1.

1. The Lac du Flambeau band shall use registration applications and registration certificates that are substantially similar to those under sub. (2) with regard to length, legibility and information content.

23.33(2g)(c)2.

2. The Lac du Flambeau band shall use registration decals that are substantially similar to those under sub. (2) with regard to color, size, legibility, information content and placement on the

all-terrain vehicle.

23.33(2g)(c)3.

3. The Lac du Flambeau band shall use a sequential numbering system that includes a series of letters or initials that identify the Lac du Flambeau band as the issuing authority.

23.33(2g)(d)

(d) (intro.) *Registration information.* The Lac du Flambeau band shall provide registration information to the state in one of the following ways:

23.33(2g)(d)1.

1. By transmitting all additions, changes or deletions of registration information to persons identified in the agreement described in par. (f), for incorporation into the registration records of this state, within one working day after the addition, change or deletion.

23.33(2g)(d)2.

2. By establishing a 24-hour per day data retrieval system, consisting of either a law enforcement agency with 24-hour per day staffing or a computerized data retrieval system to which law enforcement officials of this state have access at all times.

23.33(2g)(e)

(e) *Reports; records; tax collection.*

23.33(2g)(e)1.

1. Before June 1 annually, the Lac du Flambeau band shall submit a report to the department notifying it of the number of each type of registration certificate that the Lac du Flambeau band issued, transferred or renewed for the period beginning on April 1 of the previous year and ending on March 31 of the year in which the report is submitted.

23.33(2g)(e)2.

2. For law enforcement purposes, the Lac du Flambeau band shall make available for inspection by the department during normal business hours the Lac du Flambeau band's records of all registration certificates issued, renewed or otherwise processed under this subsection, including copies of all applications made for certificates.

23.33(2g)(e)3.

3. The Lac du Flambeau band shall ensure that the record of each registration certificate issued, renewed or otherwise processed under this subsection, including a copy of each application made, is retained for at least 2 years after the date of expiration of the certificate.

23.33(2g)(e)4.

4. The Lac du Flambeau band shall collect the sales and use taxes due under s. 77.61 (1) on any all-terrain vehicle registered under this subsection and make the report in respect to those taxes. On or before the 15th day of each month, the Lac du Flambeau band shall pay to the department of revenue all taxes that the Lac du Flambeau band collected in the previous month.

23.33(2g)(f)

(f) (intro.) *Applicability.* This subsection does not apply unless the department and the Lac du Flambeau band have in effect a written agreement under which the Lac du Flambeau band agrees to comply with pars. (a) to (e) and that contains all of the following terms:

23.33(2g)(f)1.

1. The manner in which the Lac du Flambeau band will limit its treaty-based right to fish outside the Lac du Flambeau reservation.

23.33(2g)(f)2.

2. A requirement that the fees collected by the Lac du Flambeau band under par. (b) be used only for a program for registering all-terrain vehicles, for regulating all-terrain vehicles and their operation and for providing all-terrain vehicle trails and all-terrain vehicle facilities.

23.33(2j)

(2j) Nonresident trail passes.

23.33(2j)(a)

(a) In this subsection, "public all-terrain vehicle corridor" means an all-terrain vehicle trail or other established all-terrain vehicle corridor that is open to the public but does not include an all-terrain vehicle route.

23.33(2j)(b)

(b) Except as provided in par. (e), no person may operate an all-terrain vehicle on a public all-terrain vehicle corridor in this state unless a nonresident trail pass issued under this subsection is displayed on the all-terrain vehicle.

23.33(2j)(c)

(c) The fee for a nonresident trail pass issued for an all-terrain vehicle that is exempt from registration under sub. (2) (b) 2. is \$34.25. A nonresident trail pass issued for such an all-terrain vehicle may be issued only by the department and persons appointed by the department and expires on June 30 of each year.

23.33(2j)(d)

(d) There is no fee for a nonresident trail pass issued for an all-terrain vehicle that is registered under sub. (2g) or s. 23.35. The department or Indian tribe or band shall issue a nonresident trail pass for such an all-terrain vehicle when it issues the registration certificate for the all-terrain vehicle. The department shall provide Indian tribes or bands that register all-terrain vehicles under sub. (2g) or s. 23.35 with a supply of trail passes.

23.33(2j)(e)

(e) An all-terrain vehicle that is registered under sub. (2) (a) or that is exempt from registration under sub. (2) (b) 1., 3., 3m., or 4. is exempt from having a nonresident trail pass displayed as required under par. (b). The department may promulgate a rule to exempt all-terrain vehicles that

are exempt from registration under sub. (2) (b) 5. from having nonresident trail passes displayed as required under par. (b) or may promulgate a rule to exempt owners of such all-terrain vehicles from having to pay any applicable nonresident trail pass fee.

23.33(2j)(f)

(f)

23.33(2j)(f)1.

1. The department may appoint any person who is not an employee of the department as the department's agent to issue nonresident trail passes and collect the fees for these passes.

23.33(2j)(f)2.

2. Any person, including the department, who issues a nonresident trail pass shall collect in addition to the fee under par. (c) an issuing fee of 75 cents. An agent appointed under subd. 1. may retain 50 cents of the issuing fee to compensate the agent for the agent's services in issuing the pass.

23.33(2j)(f)3.

3. The department shall establish, by rule, procedures for issuing nonresident trail passes, and the department may promulgate rules regulating the activities of persons who are appointed to be agents under this paragraph.

23.33(2m)

(2m) Rental of all-terrain vehicles.

23.33(2m)(a)

(a) (intro.) No person who is engaged in the rental or leasing of all-terrain vehicles to the public may do any of the following:

23.33(2m)(a)1.

1. Rent or lease an all-terrain vehicle for operation by a person who will be operating an all-terrain vehicle for the first time unless the person engaged in the rental or leasing gives the person instruction on how to operate an all-terrain vehicle.

23.33(2m)(a)2.

2. Rent or lease an all-terrain vehicle to a person under 16 years of age.

23.33(2m)(a)3.

3. Rent or lease an all-terrain vehicle without first ascertaining that any person under the age of 18 who will be on the all-terrain vehicle has protective headgear of the type required under s. 347.485 (1) (a).

23.33(2m)(b)

(b) A person who is engaged in the rental or leasing of all-terrain vehicles to the public shall have clean, usable protective headgear available for rent in sufficient quantity to provide headgear to all persons under the age of 18 who will be on all-terrain vehicles that the person

rents or leases.

23.33(2m)(c)

(c) The department may promulgate rules to establish minimum standards for the instruction given under par. (a) 1.

23.33(3)

(3) (intro.) Rules of operation. No person may operate an all-terrain vehicle:

23.33(3)(a)

(a) In any careless way so as to endanger the person or property of another.

23.33(3)(c)

(c) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for all-terrain vehicle use.

include

* *

23.33(3)(cm)

DN

(cm) On public property that is posted as closed to all-terrain vehicle operation or on which the operation of an all-terrain vehicle is prohibited by law.

23.33(3)(d)

(d) On Indian lands without the consent of the tribal governing body or Indian owner. Failure to post Indian lands does not imply consent for all-terrain vehicle use.

23.33(3)(e)

(e) With any firearm in his or her possession unless it is unloaded and enclosed in a carrying case or unless the firearm is a handgun, as defined in s. 175.60 (1) (bm), or any bow unless it is unstrung or enclosed in a carrying case.

23.33 - ANNOT.

NOTE: Par. (e) is shown as amended eff. 11-1-11 by 2011 Wis. Act 35. Prior to 11-1-11 it reads:

23.33 - ANNOT.

(e) With any firearm in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case.

sketch

23.33(3)(f)

(f) To drive or pursue any animal except as a part of normal farming operations involving the driving of livestock.

sketch

23.33(3)(g)

(g) When within 150 feet of a dwelling at a speed exceeding 10 miles per hour.

23.33(3)(h)

(h) On the frozen surface of public waters within 100 feet of a person not in or on an all-terrain vehicle or motor vehicle or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

23.33(3)(hg)

(hg) At a speed exceeding 15 miles per hour when it is being operated on a roadway or adjacent to a roadway with a snow removal device attached, if it is more than 150 feet from a dwelling.

23.33(3)(hr)

(hr) At a speed exceeding 5 miles per hour when it is being operated on a sidewalk or driveway with a snow removal device attached, regardless of its proximity to a dwelling.

Unclade
DN 23.33(3)(i)

(i) In a manner which violates rules promulgated by the department.

23.33(3g)

Modified

(3g) (intro.) Use of headgear. No person may operate or be a passenger on an all-terrain vehicle without wearing protective headgear of the type required under s. 347.485 (1) (a) and with the chin strap properly fastened, unless one of the following applies:

23.33(3g)(a)

(a) The person is at least 18 years of age.

23.33(3g)(b)

(b) The person is traveling for the purposes of hunting or fishing and is at least 12 years of age.

23.33(3g)(c)

(c) The all-terrain vehicle is being operated for an agricultural purpose.

23.33(3g)(d)

(d) The all-terrain vehicle is being operated by a person on land under the management and control of the person's immediate family.

23.33(4)

(4) Operation on or near highways.

23.33(4)(a)

(a) *Freeways.* No person may operate an all-terrain vehicle upon any part of any freeway which is a part of the federal system of interstate and defense highways. No person may operate an all-terrain vehicle upon any part of any other freeway unless the department of transportation authorizes all-terrain vehicle use on that freeway. ~~No person may operate an all-terrain vehicle with a snow removal device attached upon any part of any freeway under any circumstances.~~

DN

23.33(4)(b)

(b) *Other highways; operation restricted.* No person may operate an all-terrain vehicle on a

blend into (d) on next page

highway except as authorized under pars. (d), (e), and (f) and sub. (11) (am) 2. or as authorized by rules promulgated by the department and approved by the department of transportation.

23.33(4)(c)

(c) *Exceptions; municipal, state and utility operations; races and derbies; land surveying operations.*

23.33(4)(c)1.

1. Paragraphs (a) and (b) do not apply to the operator of an all-terrain vehicle owned by a municipality, state agency, or public utility, or by the Great Lakes Indian Fish and Wildlife Commission, while the operator is engaged in an emergency or in the operation of an all-terrain vehicle directly related to the functions of the municipality, state agency, or public utility, or of the Great Lakes Indian Fish and Wildlife Commission, if safety does not require strict adherence to these restrictions.

no
Note
needed

23.33(4)(c)1m.

1m. Paragraphs (a) and (b) do not apply to the operator of an all-terrain vehicle who is engaged in land surveying operations, if safety does not require strict adherence to the restrictions under pars. (a) and (b).

23.33(4)(c)2.

2. Paragraph (b) does not apply to a highway blocked off for special all-terrain vehicle events. A county, town, city or village may block off highways under its jurisdiction for the purpose of allowing special all-terrain vehicle events. No state trunk highway or connecting highway, or part thereof, may be blocked off by any county, town, city or village for any all-terrain vehicle race or derby. A county, town, city or village shall notify the local police department and the county sheriff's office at least one week in advance of the time and place of any all-terrain vehicle race or derby which may result in any street, or part thereof, of the county, town, city or village being blocked off.

23.33(4)(d)

long from previous page

(d) (intro.) *Operation on roadway.* A person may operate an all-terrain vehicle on the roadway portion of any highway only in the following situations:

23.33(4)(d)1.

1. To cross a roadway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles, pedestrians, and electric personal assistive mobility devices using the roadway.

23.33(4)(d)2.

2. On any roadway which is seasonally not maintained for motor vehicle traffic. Operation of an all-terrain vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.

23.33(4)(d)3.

include

3. To cross a bridge, culvert, or railroad right-of-way. The crossing of a bridge, culvert, or railroad right-of-way is not authorized if the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to the crossing, pedestrians, and electric personal assistive mobility devices using the roadway.

D N

23.33(4)(d)4.

D N

4. On roadways which are designated as all-terrain vehicle routes. Operation of all-terrain vehicles on a roadway which is an all-terrain vehicle route is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway which is safe given prevailing conditions.

23.33(4)(d)5.

5. On roadways if the all-terrain vehicle is an implement of husbandry, if the all-terrain vehicle is used exclusively for agricultural purposes and if the all-terrain vehicle is registered for private use under sub. (2) (d) or (2g). Operation of an all-terrain vehicle which is an implement of husbandry on a roadway is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway which is safe given prevailing conditions.

23.33(4)(d)6.

6. On roadways if the operator of the all-terrain vehicle is a person who holds a Class A permit or a Class B permit under s. 29.193 (2) and who is traveling for the purposes of hunting or is otherwise engaging in an activity authorized by the permit.

23.33(4)(d)7.

??
D-N

7. On roadways of highways that are all-terrain vehicle trails.

23.33(4)(e)

(e) (intro.) *Operation adjacent to roadway.* A person may operate an all-terrain vehicle adjacent to a roadway on an all-terrain vehicle route or trail if the person operates the all-terrain vehicle in the following manner:

23.33(4)(e)1.

1. At a distance of 10 or more feet from the roadway along U.S. numbered highways and state and county highways. Travel on the median of a divided highway is prohibited except to cross.

23.33(4)(e)2.

2. Outside of the roadway along town highways.

23.33(4)(e)3.

3. During hours of darkness in the same direction as motor vehicle traffic in the nearest lane,

D-N

although during daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic. *e*

23.33(4)(e)4.

4. Not in excess of the speed limits of the adjacent roadway. *le*

23.33(4)(e)5.

5. With due regard to safety and in compliance with rules promulgated by the department and approved by the department of transportation.

stays in (d)

23.33(4)(f)

(f) *Operation with snow removal device attached.* Except as prohibited under par. (a), and subject to ordinances enacted under sub. (11) (am) 2., a person may operate an all-terrain vehicle with a snow removal device attached on a roadway or adjacent to a roadway or on a public sidewalk during the period beginning on October 1 and ending on April 30 of each year for the purpose of removing snow if such operation is necessary to travel to or from a site where the snow removal device will be used. The travel necessary to or from the site may not exceed 2 miles. Operation of such an all-terrain vehicle on a roadway or adjacent to a roadway is authorized only if the applicable roadway speed limit is 45 miles per hour or less. Operation on a roadway of such an all-terrain vehicle is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway where it is safe to do so given prevailing conditions. Operation adjacent to a roadway of such an all-terrain vehicle shall comply with the applicable speed limit and with par. (e) 1., 2., 3., and 5.

23.33(4c)

(4c) Intoxicated operation of an all-terrain vehicle.

23.33(4c)(a)

(a) *Operation.*

23.33(4c)(a)1.

1. '*Operating while under the influence of an intoxicant.*' No person may operate an all-terrain vehicle while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle.

23.33(4c)(a)2. *e*

2. '*Operating with alcohol concentrations at or above specified levels.*' No person may engage in the operation of an all-terrain vehicle while the person has an alcohol concentration of 0.08 or more.

23.33(4c)(a)2m. *e*

2m. '*Operating with a restricted controlled substance.*' No person may engage in the operation of an all-terrain vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.

23.33(4c)(a)3.

D-N in general

3. *'Operating with alcohol concentrations at specified levels; below age 19.'* If a person has not attained the age of 19, the person may not engage in the operation of an all-terrain vehicle while he or she has an alcohol concentration of more than 0.0 but not more than 0.08.

23.33(4c)(a)4.

4. *'Related charges.'* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., or 2m. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., or 2m., the offenses shall be joined. If the person is found guilty of any combination of subd. 1., 2., or 2m. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13) (b) 2. and 3. Subdivisions 1., 2., and 2m. each require proof of a fact for conviction which the others do not require.

23.33(4c)(a)5.

5. *'Defenses.'* In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

23.33(4c)(b)

(b) *'Causing injury.'*

23.33(4c)(b)1.

1. *'Causing injury while under the influence of an intoxicant.'* No person while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle may cause injury to another person by the operation of an all-terrain vehicle.

23.33(4c)(b)2.

2. *'Causing injury with alcohol concentrations at or above specified levels.'* No person who has an alcohol concentration of 0.08 or more may cause injury to another person by the operation of an all-terrain vehicle.

23.33(4c)(b)2m.

2m. *'Causing injury while operating with a restricted controlled substance.'* No person who has a detectable amount of a restricted controlled substance in his or her blood may cause injury to another person by the operation of an all-terrain vehicle.

23.33(4c)(b)3.

3. *'Related charges.'* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., or 2m. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., or 2m. in the complaint, the crimes shall be joined under s. 971.12. If the person is found

causing injury
D-N

guilty of any combination of subd. 1, 2., or 2m. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13) (b) 2. and 3. Subdivisions 1., 2., and 2m. each require proof of a fact for conviction which the others do not require.

23.33(4c)(b)4.

4. 'Defenses.'

23.33(4c)(b)4.a.

a. In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, did not have an alcohol concentration of 0.08 or more, or did not have a detectable amount of a restricted controlled substance in his or her blood.

23.33(4c)(b)4.b.

b. In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

23.33(4g)

(4g) Preliminary breath screening test.

23.33(4g)(a)

(a) *Requirement.* A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated operation of an all-terrain vehicle law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

23.33(4g)(b)

(b) *Use of test results.* A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated operation of an all-terrain vehicle law or for the purpose of deciding whether or not to request a chemical test under sub. (4p). Following the preliminary breath screening test, chemical tests may be required of the person under sub. (4p).

23.33(4g)(c)

(c) *Admissibility.* The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under sub. (4p).

23.33(4g)(d)

(d) *Refusal.* There is no penalty for a violation of par. (a). Subsection (13) (a) and the general

penalty provision under s. 939.61 do not apply to that violation.

23.33(4j)

merge w/ (4c) (a) 1

(4j) Applicability of the intoxicated operation of an all-terrain vehicle law. In addition to being applicable upon highways, the intoxicated operation of an all-terrain vehicle law is applicable upon all premises held out to the public for use of their all-terrain vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

23.33(4L)

(4L) Implied consent. Any person who engages in the operation of an all-terrain vehicle upon the public highways of this state, or in those areas enumerated in sub. (4j), is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis as required under sub. (4p). Any person who engages in the operation of an all-terrain vehicle within this state is deemed to have given consent to submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis as required under sub. (4p).

23.33(4p)

(4p) Chemical tests.

23.33(4p)(a)

(a) *Requirement.*

23.33(4p)(a)1.

1. *'Samples; submission to tests.'* A person shall provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if he or she is requested to provide the sample by a law enforcement officer. A person shall submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if he or she is requested to submit to the test by a law enforcement officer.

23.33(4p)(a)2.

2. (intro.) *'Information.'* A law enforcement officer requesting a person to provide a sample or to submit to a chemical test under subd. 1. shall inform the person of all of the following at the time of the request and prior to obtaining the sample or administering the test:

23.33(4p)(a)2.a.

a. That he or she is deemed to have consented to tests under sub. (4L).

23.33(4p)(a)2.b.

b. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under par. (e) and is subject to the same penalties and procedures as a violation of sub. (4c) (a) 1.

23.33(4p)(a)2.c.

c. That in addition to the designated chemical test under par. (b) 2., he or she may have an additional chemical test under par. (c) 1.

23.33(4p)(a)3.

3. '*Unconscious person.*' A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this paragraph, and if a law enforcement officer has probable cause to believe that the person violated the intoxicated operation of an all-terrain vehicle law, one or more chemical tests may be administered to the person without a request under subd. 1. and without providing information under subd. 2.

23.33(4p)(b)

(b) *Chemical tests.*

23.33(4p)(b)1.

1. '*Test facility.*' Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

23.33(4p)(b)2.

2. '*Designated chemical test.*' A test facility shall designate one chemical test of breath, blood or urine which it is prepared to administer first for the purpose of authorized analysis.

23.33(4p)(b)3.

3. '*Additional chemical test.*' A test facility shall specify one chemical test of breath, blood or urine, other than the test designated under subd. 2., which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

23.33(4p)(b)4.

4. '*Validity; procedure.*' A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this subsection. Blood may be withdrawn from a person arrested for a violation of the intoxicated operation of an all-terrain vehicle law only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53

23.33(4p)(b)5.

5. '*Report.*' A test facility which administers a chemical test of breath, blood or urine for the purpose of authorized analysis under this subsection shall prepare a written report which shall include the findings of the chemical test, the identification of the law enforcement officer or the person who requested a chemical test and the identification of the person who provided the

sample or submitted to the chemical test. The test facility shall transmit a copy of the report to the law enforcement officer and the person who provided the sample or submitted to the chemical test.

23.33(4p)(c)

(c) *Additional and optional chemical tests.*

23.33(4p)(c)1.

1. '*Additional chemical test.*' If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle law or is the operator of an all-terrain vehicle involved in an accident resulting in great bodily harm to or the death of someone and if the person is requested to provide a sample or to submit to a test under par. (a) 1., the person may request the test facility to administer the additional chemical test specified under par. (b) 3. or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

23.33(4p)(c)2.

2. '*Optional test.*' If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if the person is not requested to provide a sample or to submit to a test under par. (a) 1., the person may request the test facility to administer a chemical test of his or her breath or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the designated chemical test under par. (b) 2. or the additional chemical test under par. (b) 3.

23.33(4p)(c)3.

3. '*Compliance with request.*' A test facility shall comply with a request under this paragraph to administer any chemical test it is able to perform.

23.33(4p)(c)4.

4. '*Inability to obtain chemical test.*' The failure or inability of a person to obtain a chemical test at his or her own expense does not preclude the admission of evidence of the results of a chemical test required and administered under pars. (a) and (b).

23.33(4p)(d)

(d) *Admissibility; effect of test results; other evidence.* The results of a chemical test required or administered under par. (a), (b) or (c) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated operation of an all-terrain vehicle law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This subsection does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

23.33(4p)(e)

(e) (intro.) *Refusal.* No person may refuse a lawful request to provide one or more samples of his or her breath, blood or urine or to submit to one or more chemical tests under par. (a). A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action concerning violation of par. (a) or this paragraph are limited to:

23.33(4p)(e)1.

1. Whether the law enforcement officer had probable cause to believe the person was violating or had violated the intoxicated operation of an all-terrain vehicle law.

23.33(4p)(e)2.

2. Whether the person was lawfully placed under arrest for violating the intoxicated operation of an all-terrain vehicle law.

23.33(4p)(e)3.

3. Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under par. (a) 2. or whether the request and information was unnecessary under par. (a) 3.

23.33(4p)(e)4.

4. Whether the person refused to provide a sample or to submit to a chemical test.

23.33(4t)

(4t) Report arrest to department. If a law enforcement officer arrests a person for a violation of the intoxicated operation of an all-terrain vehicle law or ~~the refusal law~~, the law enforcement officer shall notify the department of the arrest as soon as practicable.

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23.33(4x)

(4x) Officer's action after arrest for operating an all-terrain vehicle while under influence of intoxicant. A person arrested for a violation of sub. (4c) (a) 1. or 2. or a local ordinance in conformity therewith or sub. (4c) (b) 1. or 2. may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under sub. (4p) (a) 1. shows that the person has an alcohol concentration of 0.05 or less, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

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23.33(4z)

(4z) Public education program.

23.33(4z)(a)

(a) (intro.) The department shall promulgate rules to provide for a public education program to:

23.33(4z)(a)1.

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1. Inform all-terrain vehicle operators of the prohibitions and penalties included in the intoxicated operation of an all-terrain vehicle law.

23.33(4z)(a)2.

2. Provide for the development of signs briefly explaining the intoxicated operation of an all-terrain vehicle law.

23.33(4z)(b)

(b) The department shall develop and issue an educational pamphlet on the intoxicated operation of an all-terrain vehicle law to be distributed, beginning in 1989, to persons issued all-terrain vehicle registration certificates under subs. (2) and (2g).

23.33(5)

D Note no age restrictions

(5) ~~Age restrictions~~; safety certification program

23.33(5)(a)

(a) *Age restriction.* No person under 12 years of age may operate an all-terrain vehicle unless he or she is operating the all-terrain vehicle for an agricultural purpose and he or she is under the supervision of a person over 18 years of age or unless he or she is operating a small all-terrain vehicle on an all-terrain vehicle trail designated by the department and he or she is accompanied by his or her parent. No person who is under 12 years of age may operate an all-terrain vehicle which is an implement of husbandry on a roadway under any circumstances. No person who is under 12 years of age may operate an all-terrain vehicle on a roadway under the authorization provided under sub. (4) (d) 6. under any circumstances. No person who is under 16 years of age may operate an all-terrain vehicle under the authorization provided under sub. (4) (f) under any circumstances. No person who is under 12 years of age may rent or lease an all-terrain vehicle. For purposes of this paragraph, supervision does not require that the person under 12 years of age be subject to continuous direction or control by the person over 18 years of age.

23.33(5)(b)

(b) *All-terrain vehicle safety certificate.*

23.33(5)(b)1.

1. No person who is at least 12 years of age and who is born on or after January 1, 1988, may operate an all-terrain vehicle unless he or she holds a valid safety certificate.

23.33(5)(b)2.

2. Any person who is required to hold an all-terrain vehicle safety certificate while operating an all-terrain vehicle shall carry the certificate on the all-terrain vehicle and shall display the certificate to a law enforcement officer on request. Persons enrolled in a safety certification program approved by the department may operate an all-terrain vehicle in an area designated by the instructor.

23.33(5)(c)

(c) *Exceptions.* Paragraphs (a) and (b) do not apply to a person who operates an all-terrain vehicle exclusively on land under the management and control of the person's immediate family.

Paragraphs (a) and (b) do not apply to a person at least 12 years of age but under 16 years of age who holds a valid certificate issued by another state or a province of Canada. *DN*

23.33(5)(d)

(d) *Safety certification program established.* The department shall establish or supervise the establishment of a program of instruction on all-terrain vehicle laws, including the intoxicated operation of an all-terrain vehicle law, regulations, safety and related subjects. The department shall establish by rule an instruction fee for this program. The department shall issue certificates to persons successfully completing the program. An instructor conducting the program of instruction under this paragraph shall collect the fee from each person who receives instruction. The department may determine the portion of this fee, which may not exceed 50%, that the instructor may retain to defray expenses incurred by the instructor in conducting the program. The instructor shall remit the remainder of the fee or, if nothing is retained, the entire fee to the department. The department shall issue a duplicate certificate of accomplishment to a person who is entitled to a duplicate certificate of accomplishment and who pays a fee of \$2.75. *to what end*

② 23.33(5m)

grant program (5m) **Safety program.**

23.33(5m)(a)

(a) The department shall establish a program to award grants to organizations that meet the eligibility requirements under par. (b).

23.33(5m)(b)

(b) (intro.) To be eligible for a grant under this subsection, an organization shall meet all of the following requirements:

23.33(5m)(b)1.

1. The organization is a nonstock corporation organized in this state.

23.33(5m)(b)2.

2. The organization promotes the operation of all-terrain vehicles in a manner that is safe and responsible and that does not harm the environment.

23.33(5m)(b)3.

3. The organization promotes the operation of all-terrain vehicles in a manner that does not conflict with the laws, rules, and departmental policies that relate to the operation of all-terrain vehicles.

23.33(5m)(b)4.

4. The interest of the organization is limited to the recreational operation of all-terrain vehicles on all-terrain vehicle trails and other areas that are off the highways.

23.33(5m)(b)5.

5. The organization has a board of directors that has a majority of members who are

representatives of all-terrain vehicle clubs.

23.33(5m)(b)6.

6. The organization provides support to all-terrain vehicle clubs.

23.33(5m)(c)

(c) (intro.) An organization receiving a grant under this subsection shall use the grant moneys to promote and provide support to the program established under sub. (5) by conducting activities that include all of the following:

23.33(5m)(c)1.

1. Collecting data on the recreational operation of all-terrain vehicles off the highways.

23.33(5m)(c)2.

2. Providing assistance to the department in locating, recruiting, and training instructors for the program established under sub. (5) (d).

23.33(5m)(c)3.

3. Attempting to increase participation by current and future all-terrain vehicle operators and owners in the program established under sub. (5) (d).

23.33(5m)(c)4.

4. Assisting the department of natural resources and the department of tourism in creating an outreach program to inform local communities of appropriate all-terrain vehicle use in their communities and of the economic benefits that may be gained from promoting tourism to attract all-terrain vehicle operators.

23.33(5m)(c)5.

5. Attempting to improve and maintain its relationship with the department of natural resources, the department of tourism, all-terrain vehicle dealers, all-terrain vehicle manufacturers, snowmobile clubs, as defined in s. 350.138 (1) (e), snowmobile alliances, as defined in s. 350.138 (1) (d), and other organizations that promote the recreational operation of snowmobiles.

23.33(5m)(c)6.

6. Recruiting, assisting in the training of, and providing support to a corps of volunteers that will assist in providing instruction on the safe and responsible operation of all-terrain vehicles that is given in the field to all-terrain vehicle operators.

23.33(5m)(c)7.

7. Publishing a manual in cooperation with the department that shall be used to train volunteers in monitoring the recreational operation of all-terrain vehicles for safety issues and other issues that relate to the responsible operation of all-terrain vehicles.

23.33(5m)(d)

(d) The department shall pay the grants from the appropriation under s. 20.370 (5) (cx).

23.33(5r)

(5r) Landowner incentive program.

modified

23.33(5r)(a)

(a) In this subsection "public all-terrain vehicle corridor" has the meaning given in s. 23.33 (2j) (a).

23.33(5r)(b)

(b) The department shall establish a program to make incentive payments to private landowners who permit public all-terrain vehicle corridors on their lands and who apply for the payments.

23.33(5r)(c)

(c) An application is not considered complete until the forester or another employee of each county in which the public all-terrain vehicle corridor is located measures the length of the corridor in that county for the purpose of calculating the payment.

23.33(5r)(d)

(d) (intro.) Incentive payments under the program shall be calculated as follows:

23.33(5r)(d)1.

1. For a public all-terrain vehicle corridor that was open to the public for 60 days or more but for less than 180 days in the previous fiscal year, the incentive payment shall be \$25 per mile.

23.33(5r)(d)2.

2. For a public all-terrain vehicle corridor that was open to the public for 180 days or more but for less than 270 days in the previous fiscal year, the incentive payment shall be \$75 per mile.

23.33(5r)(d)3.

3. For a public all-terrain vehicle corridor that was open to the public for 270 days or more in the previous fiscal year, the incentive payment shall be \$100 per mile.

23.33(5r)(e)

(e) If a private landowner enters into an agreement with a county to allow a public all-terrain vehicle corridor on the landowner's land for a period of at least 5 years, the landowner shall receive a supplemental payment, in addition to the payment as calculated under par. (c) [par. (d)], that equals 10 percent of the payment calculated under par. (c) [par. (d)] for each full or partial fiscal year that is included in the 5-year period.

23.33 - ANNOT.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

23.33(5r)(f)

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(f) If the total amount of incentive payments made in a given fiscal year would exceed the amount available for the payments, the department shall establish a system to prorate the payments.

23.33(5r)(g)

(g) During fiscal year 2007-08, the department may expend up to \$100,000 from the appropriation under s. 20.370 (5) (cu) [s. 20.370 (5) (cv)] for incentive payments under this program.

23.33 - ANNOT.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

23.33(6)

(6) Equipment requirements.

23.33(6)(a)

(a) A person who operates an all-terrain vehicle during hours of darkness or during daylight hours on any highway right-of-way is required to display a lighted headlamp and tail lamp on the all-terrain vehicle.

23.33(6)(b)

(b) The headlamp on an all-terrain vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the all-terrain vehicle.

23.33(6)(c)

(c) The tail lamp on an all-terrain vehicle is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.

23.33(6)(d)

(d) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.

23.33(6)(e)

(e) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise and with a functioning spark arrester of a type approved by the U.S. forest service.

23.33(6)(f)

(f) An all-terrain vehicle may not be modified so that its maximum width exceeds 50 inches.

23.33(6)(g)

(g) An all-terrain vehicle may not be operated with tires other than low-pressure tires.

23.33(6)(h)

(h) A person who operates an all-terrain vehicle with a snow removal device attached as authorized under s. 23.33 (4) (f) is required to display at least one or more flashing or rotating amber or yellow lights, and at least one of these lights shall be visible from every direction.

23.33(6m)

(6m) Noise limits. No person may manufacture, sell, rent or operate an all-terrain vehicle that is constructed in such a manner that noise emitted from the all-terrain vehicle exceeds 96 decibels on the A scale as measured in the manner prescribed under rules promulgated by the department.

23.33(7)

(7) Accidents.

modified slightly

23.33(7)(a)

(a) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident to a conservation warden or local law enforcement officer as soon as possible and shall file a written report of the accident with the department on the form provided by it within 10 days after the accident.

23.33(7)(b)

(b) If the operator of an all-terrain vehicle is physically incapable of making the report required by this subsection and there was another witness to the accident capable of making the report, the witness may make the report.

23.33(8)

(8) Routes and trails.

DN what if dual purpose
is on highway designate
as route - DOT registration
enough?

same as 23.33

23.33(8)(a)

(a) *Department authority.* The department shall encourage and supervise a system of all-terrain vehicle routes and trails. The department may establish standards and procedures for certifying the designation of all-terrain vehicle routes and trails.

23.33(8)(b)

(b) *Routes.* A town, village, city or county may designate highways as all-terrain vehicle routes. No state trunk highway or connecting highway may be designated as an all-terrain vehicle route unless the department of transportation approves the designation.

23.33(8)(c)

(c) *Trails.* A town, village, city, county or the department may designate corridors through land which it owns or controls, or for which it obtains leases, easements or permission, for use as all-terrain vehicle trails.

23.33(8)(d)

(d) *Restrictions.* The designating authority may specify effective periods for the use of all-terrain vehicle routes and trails and may restrict or prohibit the operation of an all-terrain

vehicle during certain periods of the year.

23.33(8)(e)

(e) *Signs.* The department, in cooperation with the department of transportation, shall establish uniform all-terrain vehicle route and trail signs and standards. The standards may not require that any additional signs be placed on all-terrain vehicle routes concerning the operation of all-terrain vehicles with snow removal devices attached.

23.33(8)(f)

(f) *Interference with signs and standards prohibited.*

23.33(8)(f)1.

1. No person may intentionally remove, damage, deface, move or obstruct any uniform all-terrain vehicle route or trail sign or standard or intentionally interfere with the effective operation of any uniform all-terrain vehicle route or trail sign or standards if the sign or standard is legally placed by the state, any municipality or any authorized individual.

23.33(8)(f)2.

2. No person may possess any uniform all-terrain vehicle route or trail sign or standard of the type established by the department for the warning, instruction or information of the public, unless he or she obtained the uniform all-terrain vehicle route or trail sign or standard in a lawful manner. Possession of a uniform all-terrain vehicle route or trail sign or standard creates a rebuttable presumption of illegal possession.

23.33(9)

(9) **Administration; enforcement; aids.**

same as 23.33

23.33(9)(a) *tea*

(a) Enforcement. The department may utilize moneys received under sub. (2) for all-terrain vehicle registration aids administration and for the purposes specified under s. 20.370 (3) (as) and (5) (er) including costs associated with enforcement, safety education, accident reports and analysis, law enforcement aids to counties, and other similar costs in administering and enforcing this section.

LZ

fees for state projects

23.33(9)(b)

(b) (intro.) All-terrain vehicle projects. Any of the following all-terrain vehicle projects are eligible for funding as a state all-terrain vehicle project from the appropriation account under s. 20.370 (1) (ms) or for aid as a nonstate all-terrain vehicle project from the appropriation accounts under s. 20.370 (5) (ct) and (cu):

gas tax for non state

may fees for nonstate

23.33(9)(b)1.

1. Acquisition of an easement or land in fee simple.

23.33(9)(b)2.

2. An all-terrain vehicle facility such as a parking area, riding area, shelter, toilets or other improvement.

23.33(9)(b)3.

3. Development of all-terrain vehicle routes or all-terrain vehicle trails.

snowmo route trail facil
ATV " " "

23.33(9)(b)4.

4. Development or maintenance of a snowmobile route or trail or an off-the-road motorcycle trail or facility if the route, trail or facility is open for use by all-terrain vehicles.

23.33(9)(b)5.

5. Maintenance of all-terrain vehicle routes or all-terrain vehicle trails.

23.33(9)(b)6.

6. Purchase of liability insurance.

23.33(9)(c)

(c) *Signs*. In addition to the projects listed in par. (b), the department may provide aid under this subsection to a town, village, city or county for up to 100% of the cost of placing signs developed under sub. (4z) (a) 2.

23.33(10)

(10) **Liability of landowners.** Section 895.52 applies to this section.

Same

23.33(11)

(11) **Local ordinances.**

23.33(11)(a)

(a) Counties, towns, cities and villages may enact ordinances regulating all-terrain vehicles on all-terrain vehicle trails maintained by or on all-terrain vehicle routes designated by the county, city, town or village.

*Reconcile these 2
check snowmo
provisions*

23.33(11)(am)

(am)

23.33(11)(am)1.

1. Any county, town, city or village may enact an ordinance which is in strict conformity with this section and rules promulgated by the department under this section, if the ordinance encompasses all aspects encompassed by this section, except as provided in subd. 3.

23.33(11)(am)2.

2. For a roadway, or for a portion of a roadway, that is located within the territorial boundaries of a city, village, or town, the city, village, or town may enact an ordinance to authorize the operation of all-terrain vehicles with snow removal devices attached on the roadway, or adjacent to the roadway, if the applicable roadway speed limit is greater than 45 miles per hour, and regardless of whether the city, village, or town has jurisdiction over the roadway.

23.33(11)(b)

(b) If a county, town, city or village adopts an ordinance regulating all-terrain vehicles, its clerk shall immediately send a copy of the ordinance to the department and to the office of any law enforcement agency of the municipality or county having jurisdiction over any highway designated as an all-terrain vehicle route.

23.33(11p)

(11p) Utility terrain vehicle pilot program.

23.33(11p)(a)

(a) (intro.) In this subsection:

23.33(11p)(a)1.

1. "Federal agency" means a federal agency that receives state aid for a nonstate all-terrain vehicle project under sub. (9) (b).

23.33(11p)(a)2.

2. "Golf cart" means a vehicle whose speed attainable in one mile does not exceed 20 miles per hour on a paved, level surface, and that is designed and intended to convey one or more persons and equipment to play the game of golf in an area designated as a golf course.

23.33(11p)(a)3.

3. "Low pressure tire" means a tire that has a minimum width of 6 inches and that is designed to be inflated with an operating pressure not to exceed 20 pounds per square inch as recommended by the manufacturer.

23.33(11p)(a)4.

4. "Low-speed vehicle" means a low-speed vehicle, as defined in 49 CFR 571.3, that satisfies the equipment standards under 49 CFR 571.500 and that was originally manufactured to meet the applicable equipment standards under 49 CFR 571.500.

23.33(11p)(a)5.

5. "Municipality" means a city, village, or town.

23.33(11p)(a)6.

6. (intro.) "Utility terrain vehicle" means a motor driven device, other than a golf cart or low-speed vehicle, that is designed to be used primarily off of a highway and that has, and was originally manufactured with, all of the following:

23.33(11p)(a)6.a.

a. A gross weight of more than 900 pounds but not more than 1,999 pounds.

23.33(11p)(a)6.b.

b. Four or more low-pressure tires.

23.33(11p)(a)6.c.

c. A cargo box or dump box.

23.33(11p)(a)6.d.

d. A steering wheel.

23.33(11p)(a)6.e.

e. A tail light.

23.33(11p)(a)6.f.

f. A brake light.

23.33(11p)(a)6.g.

g. Two headlights.

23.33(11p)(a)6.h.

h. A width of not more than 65 inches.

23.33(11p)(a)6.i.

i. Seats for at least 2 occupants, all of which seating is designed not to be straddled.

23.33(11p)(a)6.j.

j. A system of seat belts, or a similar system, for restraining each occupant of the device in the event of an accident.

23.33(11p)(a)6.k.

k. A system of structural members designed to reduce the likelihood that an occupant would be crushed as the result of a rollover of the device.

23.33(11p)(b)

(b) The department of natural resources, in consultation with the department of transportation, shall administer a pilot program to investigate the effects of using utility terrain vehicles on routes and trails that are used and authorized to be used by all-terrain vehicles, to evaluate whether it is feasible and appropriate to expand the allowable use of utility terrain vehicles.

23.33(11p)(c)

(c)

23.33(11p)(c)1.

1. The department, any federal agency, and any county is eligible to participate in the pilot program. If a county elects to participate in the pilot program, the governing body of the county shall adopt a resolution to that effect. If a county adopts such a resolution, the resolution shall apply to all of the municipalities within the county unless the governing body of a municipality adopts a resolution that provides that the municipality will not participate in the pilot program. The governing body of each participating county or municipality may withdraw from the pilot program before July 1, 2012, by adopting a resolution to that effect.

23.33(11p)(c)2.

2. If a county or municipality adopts a resolution under subd. 1., its clerk shall immediately send a copy of the resolution to the department and to the office of any law enforcement agency of the county or municipality having jurisdiction over any all-terrain vehicle route or trail designated under par. (d).

23.33(11p)(d)

(d) (intro.) The department or a federal agency, county, or municipality that participates in the pilot program may designate any of the following located within their respective jurisdictions:

23.33(11p)(d)1.

1. All-terrain vehicle routes and trails that may be used by operators of utility terrain vehicles.

23.33(11p)(d)2.

2. All-terrain vehicle routes and trails upon which utility terrain vehicle use is prohibited.

23.33(11p)(e)

(e) (intro.) For the purposes of all of the following, a utility terrain vehicle that is operated as authorized under this subsection is considered an all-terrain vehicle:

23.33(11p)(e)1.

1. Sections 345.11 (1r), 346.02 (11), 349.02, 885.235 (1g) and (1k), 895.049, and 901.053.

23.33(11p)(e)2.

2. Subsections (3), (3g), (4), (4c) to (4x), (6), (7), (10), (12), and (13).

23.33(11p)(e)3.

3. Local ordinances enacted by a county or municipality under sub. (11).

23.33(11p)(f)

(f) No person may operate or give permission for the operation of, a utility terrain vehicle on an all-terrain vehicle route or trail designated by the department or a federal agency, county, or municipality under par. (d) 1. unless the utility terrain vehicle is registered for public use by the department. The department shall register a utility terrain vehicle and collect fees for registration of a utility terrain vehicle under this subsection in the same manner as the department registers and collects fees for registration of all-terrain vehicles for public use under sub. (2). All fees collected by the department under this subsection shall be credited to the appropriation account under s. 20.370 (1) (iv).

23.33(11p)(g)

(g) No person under the age of 16 may operate a utility terrain vehicle on an all-terrain vehicle route or trail designated under par. (d) 1. No person who is at least 16 years of age and who is born on or after January 1, 1988, may operate a utility terrain vehicle on an all-terrain vehicle

route or trail designated under par. (d) 1. unless he or she holds a valid all-terrain vehicle safety certificate issued under sub. (5) (d).

23.33(11p)(h)

(h)

23.33(11p)(h)1.

1. The department of natural resources, in consultation with the department of transportation and with the federal agencies, counties, and municipalities participating in the pilot program, shall evaluate the effect of using utility terrain vehicles on all-terrain vehicle routes and trails. Except as provided in subd. 2., the department of natural resources shall report the results of its evaluation to the legislature under s. 13.172 (2) no later than June 30, 2012.

23.33(11p)(h)2.

2. The department may report the results of its evaluation under subd. 1 in the form of an addendum to the evaluation submitted by the department under s. 23.33 (11m) (g), 2007 stats. The department is not required to report the results of its evaluation as specified under subd. 1. if the department's evaluation is substantially the same as the evaluation submitted by the department under s. 23.33 (11m) (g), 2007 stats.

23.33(11p)(i)

(i) The pilot program under this subsection does not apply after June 30, 2012.

23.33(12)

(12) Enforcement.

LZ officer? check snow mo

23.33(12)(a)

(a) An officer of the state traffic patrol under s. 110.07 (1), inspector under s. 110.07 (3), conservation warden appointed by the department under s. 23.10, county sheriff or municipal peace officer has authority and jurisdiction to enforce this section and ordinances enacted in accordance with this section.

23.33(12)(b)

(b) No operator of an all-terrain vehicle may refuse to stop after being requested or signaled to do so by a law enforcement officer or a commission warden as defined in s. 939.22 (5).

23.33(13)

(13) Penalties.

"refer to ATVs"

23.33(13)(a)

default

(a) *Generally.* Except as provided in pars. (am) to (e), any person who violates this section shall forfeit not more than \$250.

23.33(13)(am)

(am) *Penalty related to interference with signs and standards.* Except as provided in par. (cg), a person who violates sub. (8) (f) and who, within the last 2 years prior to the arrest for the current violation, was 2 or more times previously convicted for violating a provision of this chapter shall

forfeit not more than \$500.

23.33(13)(ar)

(ar) *Penalty related to nonresident trail passes.* Any person who violates sub. (2j) shall forfeit not more than \$1,000.

23.33(13)(b)

(b) *Penalties related to intoxicated operation of an all-terrain vehicle.*

23.33(13)(b)1.

1. Except as provided under subds. 2. and 3., a person who violates sub. (4c) (a) 1., 2., or 2m. or (4p) (e) shall forfeit not less than \$150 nor more than \$300.

23.33(13)(b)2.

2. Except as provided under subd. 3., a person who violates sub. (4c) (a) 1., 2., or 2m. or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated operation of an all-terrain vehicle law or the refusal law shall be fined not less than \$300 nor more than \$1,100 and shall be imprisoned not less than 5 days nor more than 6 months.

23.33(13)(b)3.

3. A person who violates sub. (4c) (a) 1., 2., or 2m. or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated operation of an all-terrain vehicle law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

23.33(13)(b)4.

4. A person who violates sub. (4c) (a) 3. or (4p) (e) and who has not attained the age of 19 shall forfeit not more than \$50.

23.33(13)(bg)

(bg) *Penalties related to intoxicated operation of an all-terrain vehicle; underage passengers.*

If there is a passenger under 16 years of age on the all-terrain vehicle at the time of a violation that gives rise to a conviction under sub. (4c) (a) 1. or 2. or (4p) (e), the applicable minimum and maximum forfeitures, fines, and terms of imprisonment under pars. (b) 1., 2., and 3. for the conviction are doubled.

23.33(13)(br)

(br) *Penalties related to intoxicated operation of an all-terrain vehicle; enhancers.*

23.33(13)(br)1.

1. If a person convicted under sub. (4c) (a) 1. or 2. had an alcohol concentration of 0.17 to 0.199 at the time of the offense, the minimum and maximum fines specified under par. (b) 3. for the conviction are doubled.

23.33(13)(br)2.

2. If a person convicted under sub. (4c) (a) 1. or 2. had an alcohol concentration of 0.20 to 0.249 at the time of the offense, the minimum and maximum fines specified under par. (b) 3. for the conviction are tripled.

23.33(13)(br)3.

3. If a person convicted under sub. (4c) (a) 1. or 2. had an alcohol concentration of 0.25 or above at the time of the offense, the minimum and maximum fines under par. (b) 3. for the conviction are quadrupled.

23.33(13)(br)4.

4. The increased fines in this paragraph do not apply if the person convicted under sub. (4c) (a) 1. or 2. is subject to par. (bg).

23.33(13)(c)

(c) *Penalties related to causing injury; intoxicants.* A person who violates sub. (4c) (b) shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned not less than 30 days nor more than one year in the county jail.

23.33(13)(cg)

(cg) *Penalties related to causing death or injury; interference with signs and standards.* A person who violates sub. (8) (f) 1. is guilty of a Class H felony if the violation causes the death or injury, as defined in s. 30.67 (3) (b), of another person.

23.33(13)(cm)

(cm) *Sentence of detention.* The legislature intends that courts use the sentencing option under s. 973.03 (4) whenever appropriate for persons subject to par. (b) 2. or 3. ~~or 4.~~ The use of this option can result in significant cost savings for the state and local governments.

23.33(13)(d)

(d) *Calculation of previous convictions.* In determining the number of previous convictions under par. (b) 2. and 3., convictions arising out of the same incident or occurrence shall be counted as one previous conviction.

23.33(13)(dm)

(dm) *Reporting convictions to the department.* Whenever a person is convicted of a violation of (the intoxicated operation of an all-terrain vehicle law) the clerk of the court in which the conviction occurred, or the justice, judge or magistrate of a court not having a clerk, shall forward to the department the record of such conviction. The record of conviction forwarded to the department shall state whether the offender was involved in an accident at the time of the offense.

23.33(13)(e)

(e) *Alcohol, controlled substances or controlled substance analogs; assessment.* In addition to

any other penalty or order, a person who violates sub. (4c) (a) or (b) or (4p) (e) or who violates s. 940.09 or 940.25 if the violation involves the operation of an all-terrain vehicle, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol, controlled substances or controlled substance analogs. The assessment order shall comply with s. 343.30 (1q) (c) 1. a. to c. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

23.33(13)(f)

(f) *Restoration or replacement of signs and standards.* In addition to any other penalty, the court may order the defendant to restore or replace any uniform all-terrain vehicle route or trail sign or standard that the defendant removed, damaged, defaced, moved or obstructed.

23.33 - ANNOT.

History: 1985 a. 29; 1987 a. 200, 353, 399, 403; 1989 a. 31, 275, 359; 1991 a. 39, 303, 315; 1993 a. 16, 105, 119, 405; 1995 a. 27 ss. 1350 to 1351, 9126 (19); 1995 a. 436, 448; 1997 a. 27, 248, 283; 1999 a. 9; 2001 a. 16, 90, 106, 109; 2003 a. 30, 97, 251, 326; 2005 a. 25, 253, 481; 2007 a. 20 ss. 664m to 666m, 9121 (6) (a); 2007 a. 27, 209; 2009 a. 85, 175, 252, 367; 2011 a. 35.

23.33 - ANNOT.

Cross-reference: See also ch. NR 64, Wis. adm. code.

23.33 - ANNOT.

The safety certificate requirement under sub. (5) is a creation of the legislature, and the legislature has specified who is required to comply with the requirement. When a person is not required to obtain a safety certificate, that person cannot be negligent for failing to do so. Hardy v. Hoefflerle, 2007 WI App 264, 306 Wis. 2d 513, 743 N.W.2d 843, 06-2861.

23.33 - ANNOT.

County forest roads open to vehicular traffic are highways that can be designated as routes under sub. (8) (b). 77 Atty. Gen. 52.